

105TH CONGRESS
2D SESSION

H. R. 4238

To amend title I of the Employee Retirement Income Security Act of 1974 to establish requirements in the case of pension plans covering less than 100 participants relating to entities that hold plan assets and annual asset statements regarding such assets.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 1998

Mr. GEJDENSON (for himself, Ms. DELAURO, Mrs. KENNELLY of Connecticut, Mrs. JOHNSON of Connecticut, Mr. SHAYS, and Mr. MALONEY of Connecticut) introduced the following bill; which was referred to the Committee on Education and Workforce

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to establish requirements in the case of pension plans covering less than 100 participants relating to entities that hold plan assets and annual asset statements regarding such assets.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Em-
5 ployee Retirement Protection Act of 1998”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) over 51 million American workers, rep-
4 resenting about half of the private-sector workforce,
5 do not have an employer-provided pension;

6 (2) 600,000 private pension plans are spon-
7 sored by firms with less than 100 employees;

8 (3) 32 million Americans working for small
9 businesses do not have employer-provided pensions;

10 (4) over \$3,500,000,000,000 is invested in the
11 private pension system;

12 (5) approximately \$400,000,000,000 is invested
13 in pension plans serving companies with less than
14 100 employees;

15 (6) billions of dollars in small pension plans are
16 potentially at risk because they are held by unregu-
17 lated persons;

18 (7) public confidence in the private pension sys-
19 tem is eroded when workers and their families lose
20 their retirement assets due to fraud, embezzlement,
21 or mismanagement;

22 (8) it is a goal of the Congress to improve pri-
23 vate pension security for employees of small busi-
24 nesses;

25 (9) it is a goal and the responsibility of the
26 Congress to protect the assets of small plans, not

1 only for the benefit of workers and their families,
2 but also to increase public confidence in the private
3 pension system, thereby encouraging greater partici-
4 pation in the system; and

5 (10) protection of the assets of small pension
6 plans must be balanced against regulatory burdens
7 which can discourage small businesses from offering
8 pension plans.

9 (b) PURPOSES.—The purposes of this Act are—

10 (1) to provide an enhanced level of protection
11 for the assets of small pension plans;

12 (2) to give the employees and owners of small
13 businesses the tools to ensure that their retirement
14 assets are being handled in a secure fashion;

15 (3) to increase public confidence in the private
16 pension system;

17 (4) to ensure that the employees of small busi-
18 nesses know how to obtain accurate information
19 about their pension plan assets; and

20 (5) to provide clear, enforceable standards gov-
21 erning disclosure of financial information by
22 custodians of small pension plans to workers and
23 their families.

1 **SEC. 3. REQUIREMENTS FOR SMALL PENSION PLANS RE-**
2 **LATING TO HOLDERS OF PLAN ASSETS AND**
3 **ANNUAL ASSET STATEMENTS.**

4 (a) IN GENERAL.—Paragraph (2) of section 104(a)
5 of the Employee Retirement Income Security Act of 1974
6 (29 U.S.C. 1024(a)(2)) is amended—

7 (1) by redesignating subparagraph (B) as sub-
8 paragraph (C); and

9 (2) by inserting after subparagraph (A) the fol-
10 lowing new subparagraph:

11 “(B) Subparagraph (A) shall apply in connection
12 with any annual report otherwise required to be filed by
13 the administrator of any such plan only if—

14 “(i) the assets of the plan are held by an en-
15 tity—

16 “(I) in a manner permitted in section
17 403(b), or

18 “(II) which is a bank or other person who
19 is approved by the Secretary of the Treasury
20 pursuant to section 408(a)(2) of the Internal
21 Revenue Code of 1986, and

22 “(ii) under the terms of the plan, such entity is
23 required to provide to each participant and bene-
24 ficiary, upon request, a written statement setting
25 forth a listing of the assets of the plan held by such

1 entity and the value of such assets as of the most
2 recent valuation date.

3 Any such entity shall also provide to the Secretary, upon
4 request, a written statement described in clause (ii). Such
5 entity shall certify as to the authenticity and accuracy of
6 the information contained in any statement provided pur-
7 suant to this subparagraph. The Secretary may prescribe
8 regulations setting forth the form and manner in which
9 any such statement is to be provided.”.

10 (b) NOTIFICATION OF RIGHT TO ASSET STATE-
11 MENT.—Subsection (b) of section 104 of such Act (29
12 U.S.C. 1024(b)) is amended—

13 (1) by redesignating paragraph (4) as para-
14 graph (5); and

15 (2) by inserting after paragraph (3) the follow-
16 ing new paragraph:

17 “(4) The administrator of each pension plan for
18 which simplified annual reports are prescribed pursuant
19 to subsection (a)(2)(A) shall notify its participants and
20 beneficiaries of their right under subsection (a)(2)(B)(ii)
21 to request an asset statement from an entity holding the
22 assets of the plan. Such notification shall also inform them
23 of their right to request that the Secretary of Labor make
24 such requests on their behalf. Such notification shall be

1 included as part of the materials necessary to fairly sum-
2 marize the latest annual report.”.

3 (c) LIABILITY OF ADMINISTRATOR FOR FAILURE TO
4 ENSURE PROMPT DISTRIBUTION OF REQUESTED STATE-
5 MENTS.—Subsection (c) of section 502 of such Act (29
6 U.S.C. 1132(c)) is amended—

7 (1) by redesignating paragraph (7) as para-
8 graph (8); and

9 (2) by inserting after paragraph (6) the follow-
10 ing new paragraph:

11 “(7)(A)(i) In any case in which an entity described
12 in section 104(a)(2)(B)(i) holding the assets of a pension
13 plan fails or refuses to comply with a request, by a partici-
14 pant or beneficiary under the plan, for any statement
15 which such entity is required by the plan, pursuant to sec-
16 tion 104(a)(2)(B)(ii), to provide to such participant or
17 beneficiary by mailing the material requested to the last
18 known address of the requesting participant or beneficiary
19 within 30 days after the date of the receipt of such re-
20 quest, the administrator of such plan may in the court’s
21 discretion be personally liable to such participant or bene-
22 ficiary in the amount of up to \$100 a day from the date
23 of such failure or refusal, and the court may in its discre-
24 tion order such other relief as it deems proper. The Sec-

1 retary may prescribe, by regulation, alternate means of
2 satisfying the requirements of this clause.

3 “(ii) For purposes of this subparagraph, each viola-
4 tion described in clause (i) with respect to any single par-
5 ticipant or beneficiary shall be treated as a separate viola-
6 tion.

7 “(iii) No liability shall arise under this subparagraph
8 for any failure resulting from matters reasonably beyond
9 the control of the entity or the plan administrator.

10 “(B)(i) If, within 30 days after a request by the Sec-
11 retary to an entity described in section 104(a)(2)(B)(i)
12 holding the assets of a pension plan, the entity fails to
13 provide the asset statement requested to the Secretary, the
14 Secretary may assess a civil penalty against the plan ad-
15 ministrator of up to \$100 a day from the date of such
16 failure.

17 “(ii) No penalty shall be imposed under this subpara-
18 graph for any failure resulting from matters reasonably
19 beyond the control of the entity or the plan administrator,
20 as determined by the Secretary in the Secretary’s sole dis-
21 cretion.

22 “(C) For purposes of this paragraph, the inclusion
23 of materially incorrect or incomplete information in any
24 statement provided in response to a request made pursu-

1 ant to section 104(a)(2) shall be treated as a failure to
2 comply with such request.”.

3 **SEC. 4. EFFECTIVE DATE.**

4 The amendments made by this Act shall apply with
5 respect to plan years beginning after 180 days after the
6 date of the enactment of this Act.

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